No. 92-1210

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

MARCUS N. BRESSLER,

Petitioner,

—v.—

FORTUNE MAGAZINE, A DIVISION OF TIME INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT FORTUNE MAGAZINE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court below correctly held, based on its review of the entire record, including substantial evidence provided by a variety of mutually corroborative sources, that plaintiff, a public official, failed to demonstrate that the challenged portion of the article was published with actual knowledge of its falsity or serious doubts as to its truth.

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BRIEF OF RESPONDENT FORTUNE MAGAZINE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent Fortune Magazine ("Fortune")[1] respectfully submits that a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit should not issue because that judgment is not in conflict—nor even said to be in conflict—with that of any other circuit, because no question worthy of the exercise of the Court's certiorari jurisdiction is presented and because, in any event, the decision below is in all respects correct.

1 Pursuant to Supreme Court Rule 29.1, Fortune advises the Court that it is a division of Time Inc., a wholly-owned subsidiary of Time Warner Inc. A list of all other affiliated companies, including all other subsidiaries (except wholly-owned subsidiaries) of Time Warner Inc. is attached as an appendix to this brief.

COUNTER-STATEMENT OF THE CASE

The Petition misstates certain significant facts and omits mention of the documentary evidence in the record reflecting Fortune's extensive investigation and its reliance on a number of mutually corroborative sources for the article at issue. The Petition also wholly fails to note that Petitioner refused to speak with Fortune when its reporter sought to interview him. These and other omissions and misstatements necessitate this counter-statement. *See* Supreme Court Rule 15.1.[2]

The Article

The October 27, 1986 Fortune article at issue, "Nuclear Scandal Shakes The TVA," was primarily devoted to a discussion of the nine non-operating nuclear power plants owned by the Tennessee Valley Authority (TVA) and to an investigation concerning allegations of conflict of interest on the part of the TVA's chief of nuclear operations. Seven paragraphs of the article (at 40, 44) reported on federal and private investigators' "allegations about an attempted cover-up of safety questions at the Watts Bar plant" and the involvement therein of Marcus Bressler, the TVA specialist on nuclear engineering quality and safety standards.

The article reported that a number of welds in pipes carrying water and steam into and out of the reactor containment area at that nuclear power plant had not been inspected in accordance with the governing engineering code requirements. (*Id.* at 44) Investigators had found evidence, the article reported, that an independent inspector employed by the Hartford Steam Boiler Inspection and Insurance Company ("Hartford") under a con-

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2 We have also submitted for lodging with the Court a photocopy of the article at issue, which appeared in the record below (Joint Exhibit ("Ex. J") 23-29; Joint Appendix ("JA") 251-52, 1687), since the Petition provides only edited excerpts. (Compare Petition ("Pet.") at 3-5 with article at pp. 44, 48.)

tract with TVA had objected to the use of such pipe welds "as is" but that he had been directed by his superiors to accede to such use. (*Id.* at 44) The article stated that TVA's own investigators (identified by name) found evidence that "pressure" was brought to bear by TVA "to cover up the safety violation" and it reported that the Hartford incident was confirmed in a draft report by the federal Nuclear Regulatory Commission ("NRC"). (*Id.* at 48) Petitioner Marcus Bressler, of TVA's engineering code compliance group, was said to have been named by investigators as having "exerted" "pressure" "to cover up the breach of safety standards" and to have "warned" Hartford "to get its inspectors in line" or face the loss of renewal of its inspection contract. (*Id.* at 48) The article also reported that two of the internal TVA investigators who had looked into this and other allegations of safety violations had complained that they had themselves been "harassed and intimidated by TVA management" for their investigative efforts. (*Id.* at 48) Their claims of harassment, the article pointed out, were upheld by the United States Department of Labor. (*Id.*)

Several months after the Fortune article appeared, the Nuclear Regulatory Commission, the federal agency with oversight responsibility for TVA nuclear plants (and which conducted one of the investigations reported upon by Fortune), issued a formal Report of Investigation. The NRC Report concluded that

> a preponderance of testimonial, documentary, and circumstantial evidence established that four of nine ANIs [Authorized Nuclear Inspectors] were either coerced, pressured, harassed, intimidated, and/or threatened by HSBII [Hartford] management. This included one ANI who was directed by his management to accept the disposition of an NCR [nonconforming condition, or nonconformance, report] which did not meet code requirements. Furthermore, it appears that responsible TVA managers searched for avenues to avoid the delay of fuel loading and the expense of inspecting the hidden

> welds, and may have pressured HSBII [Hartford] management to accept the disposition of this NCR that violated code requirements.[3]

The only "TVA personnel," management or otherwise, referred to in the conclusion section of the Report were Bressler and two colleagues in the Office of Code Administration, which he headed.[4]

* * *

In 1986, as today, the role of nuclear power, the safety and reliability of nuclear power plants, and the procedures that safeguard them were of intense public interest, controversy, and concern.

TVA is (and was) responsible for meeting "quality assurance requirements for the design, construction, and operation of [nuclear power plant] structures, systems, and components. . . [and for] all activities affecting the safety-related functions of those structures, systems, and components" at each of its power plants. 10 C.F.R. Pt. 50, App. B, at 772 (1992). The applicable regulations permitted TVA to delegate these "quality assurance" functions to "independent" contractors. *Id.* at 772-73. TVA was required, however, to ensure that the individuals who performed

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3 United States Nuclear Regulatory Commission, *Report of Investigation: Watts Bar Nuclear Power Plant—Alleged Coercion of Authorized Nuclear Inspectors (ANI) by ANI Management Through TVA Management* (Nov. 20, 1986) ("NRC Report") at 2 (Ex. J-37; JA 341-42, 1693).

4 *See* NRC Report at 34-36. Although the Petition asserts that the "final [NRC] report did not even mention Bressler, much less any of Fortune's serious allegations about him" (Pet. 9), Bressler was explicitly mentioned in the Report by name as the subject of allegations to the effect that he had told Hartford management that the conduct of their inspectors might cause their company to lose its inspection contract with TVA. (NRC Report at 13, 26, 35) The Petition's statement in this crucial respect is flatly at variance with the record.

these important "quality assurance" functions "shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions." *Id.* at 773.

TVA contracted with Hartford to perform inspections at TVA's Watts Bar nuclear power plant so as to identify any such problems during the construction of that facility. On-site inspections of Watts Bar were performed by Hartford personnel known as Authorized Nuclear Inspectors ("ANIs"), each of whom received substantial training before attaining such status. The ANIs inspected nuclear plant construction to determine, *inter alia*, if such construction satisfied the requirements of the Code promulgated by the American Society of Mechanical Engineers (ASME) for such construction.

The Fortune statements concerning Petitioner Bressler related to the role he played in the treatment of a "nonconforming condition report" (NCR) concerning an acknowledged departure from that Code and pressure that was brought to bear on individual ANIs through their employer Hartford in connection with the handling of that report.

In the spring of 1984, a Hartford inspector named Howard Haston learned from a TVA employee that certain welds on pipes contained within the "penetration assemblies" at the Watts Bar plant, then under construction by TVA, had not been visually inspected for possible leakage as part of certain required testing. The piping in question, as one of plaintiff's experts testified at trial, "penetrate[d]" the "steel containment vessel" which contains "the reactor vessel" as well as "the primary reactor coolant piping, which is what contains the more critical nuclear fuel, the radiated water, fluids, and poses the greatest danger" in the event of an accident. The ASME Code requires that the welds on all such pipes be tested under water pressure and visually observed as part of this test to detect any leakage ("hydrostatically tested"). No leakage whatsoever is permitted under the ASME Code. At least one internal weld in

each of the approximately 50 penetration assemblies at issue in Unit One at Watts Bar had not been visually inspected. These welds were, as both plaintiff and plaintiff's expert conceded, "safety-related welds".[5]

Some time after inspector Haston prepared a preliminary "monitoring report" on the uninspected welds, TVA personnel prepared a nonconforming condition report describing the failure to meet the Code requirements. A TVA engineer reviewed the report and, after consulting with plaintiff Bressler, decided that no further action was required to deal with the lack of inspection. The engineer prepared a disposition recommendation for "use as is". He acknowledged that Bressler was "instrumental in suggesting the disposition and the rationale" set forth in his recommendation memo.

Inspector Haston's signature was required on the report to approve the use of the welded pipes, notwithstanding the nonconforming condition. In its absence, TVA would have been obliged to seek approval from the Nuclear Regulatory Commission, an approval process that Bressler and others at TVA feared might delay scheduled fuel loading. (NRC Report at 35) But inspector Haston was unwilling to "certify that to the best of my knowledge all code requirements have been met" for the simple reason that they had not—the safety-related welds had not been visually inspected for leakage as part of the hydrostatic testing. (Testimony of Howard Haston, JA 628)

Bressler contacted Haston on April 20, 1984, after Haston had "identified the problem" but before the "use as is" disposition was prepared. Haston continued to insist that there was a Code violation. He reported the violation first orally and then in writing to his Hartford superiors. Although denying that any improper pressure was exerted, Bressler, Haston and two of

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5 A safety-related weld is one that would "prevent or mitigate" the consequences of an accident. (TVA, *ASME Section III Quality Assurance Manual*, at 9) (Defendant's Exhibit ("Ex. D") 24; JA 587-88, 1767)

Haston's superiors, Harold Robison and William Higginbotham, all acknowledged that during this period Bressler discussed the matter directly with them.

Robison thereafter wrote a memorandum to Haston telling him that Hartford management had concluded that the TVA's resolution was acceptable. The memo was based on the assumption that Haston's objection was only that he or another ANI personally had not visually inspected the welds as part of the tests. But as Haston explicitly observed in his written response and in his conversations with Robison, his concern was that *no one* had visually inspected the welds for leakage. Despite Haston's remonstrations and notwithstanding the Code requirements, Haston's Hartford superiors directed him, against his will, to sign the report approving the welds.

After receiving that direction, Haston did sign the report, but only after placing on it an explicit notation that he did so "per written and verbal direction of H.L. Robison". Higginbotham acknowledged that Haston did "sign against his will", that a sign-off accompanied by a notation such as Haston's was without precedent in his experience, and that in retrospect, the "use as is" disposition in the report at issue represented "a poor judgment call". Bressler himself later acknowledged that the welds in question did not satisfy the Code. (NRC Report at 33)

In February, 1985, TVA certified to the Nuclear Regulatory Commission that Watts Bar was ready for an operating license. By the next month, however, the Subcommittee on Oversight and Investigation of the House Committee on Commerce and Energy had assigned an investigator to look into "employee concern having to do with allegations there was collusion between TVA and Hartford Steam Boiler of Atlanta to the effect their on-site nuclear inspectors were being intimidated or forced to sign off on systems that they felt were not safe." The TVA Board of Directors was advised in April, 1985 by an engineer on TVA's Nuclear Safety Review Staff (NSRS) that

> Towards the end of January 1984 through February 1984 a series of anonymous calls started to come in pouring out their hearts on structural welding and piping welding (ASME). . . . Most of these calls centered on two subjects, NCR [nonconformance report] 2111 from Watts Bar and the ANIs (Authorized Nuclear Inspectors). . . . The stories on the ANIs were horrendous. They came in two versions, one that they had been "bought off", the other was that they had been told to back off by their employers as a result of "TVA pressure". (Ex. J-10 at 6; JA 242-43, 1266)

The TVA Board hired an independent contractor, the Quality Technology Corporation (QTC), to investigate those concerns.

Mansour Guity, an investigator for the NSRS, was later also assigned by TVA to look into the underlying claims of collusion or coercion. After interviewing Hartford ANIs and reviewing Hartford documents, Guity reported to his TVA superiors that he had gathered evidence demonstrating, *inter alia*, collusion between TVA managers and Hartford managers in pressuring inspectors to accept nonconforming items. Guity himself told TVA's Assistant General Counsel that Bressler played a central role in the apparent "collusion", by "using his position on various national code committees to cause Hartford to take positions on TVA Code technical issues they wouldn't otherwise take".

At a meeting involving Hartford personnel and Bressler, held during a period in which QTC investigators were making inquiries of TVA personnel and TVA was considering a renewal of the Hartford contract with TVA, Bressler complained about communications between Hartford inspectors and the very QTC investigators whom TVA had hired to look into employees' safety concerns. (Testimony of Marcus Bressler, JA 766-67) In part as a result of Bressler's complaints, Hartford issued new regulations restricting communications between its inspectors and outside investigators, regulations requiring that all code or quality issues be cleared with Hartford management by indi-

vidual ANIs before they discussed them with the investigators. (Ex. D-45, JA 423, 1785)

In October 1985, Guity resigned from the still uncompleted NSRS investigation into the alleged "collusion", on the ground that his TVA superiors were exerting "undue pressure" on him during the investigation.[6]

In November 1985, the NRC Office of Investigation began yet another investigation into the safety concerns. On November 20, 1986, about a month after Fortune's article was published, the NRC released its final report. The Report, entitled "Watts Bar Nuclear Plant: Alleged Coercion of Authorized Nuclear Inspectors (ANI) by ANI Management Through TVA Management," specifically confirmed that ANI Haston was among those "coerced, pressured, harassed, threatened and/or intimidated by Higginbotham [or] Robison . . . ." (NRC Report at 34) Bressler specifically admitted to the NRC that "the ASME Code was violated when the inaccessible welds were not examined for leakage during the system hydrostatic testing" and that "the planned schedules for fuel loading were also a factor in not inspecting the welds." (*Id.* at 35)

The NRC Report quoted Hartford ANIs who stated that they had been pressured by the TVA, through Hartford management. One of the ANIs, Henry Best (who had replaced Haston at Watts Bar in the early fall of 1985), told the NRC that his supervisor, Higginbotham, had named Bressler as the source of a warning that Best might cause Hartford to "los[e its] contract with TVA." (NRC Report at 13) The NRC Report also quoted

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6 Guity filed a retaliation claim against TVA in December 1985 before the Department of Labor, asserting that he had been pressured because of his investigation's preliminary findings. So did the engineer who had advised TVA's Board about "TVA pressure". After the Department of Labor ruled in favor of both claimants, and prior to the hearing of its appeal, TVA settled the cases, agreeing to provide back pay, attorneys' fees, and reinstatement as part of the settlement.

Higginbotham's acknowledgment that "he has had calls from . . . Bressler and Joest of CSM [Codes, Standards and Materials], complaining about activities of the ANIs" and confirmed Haston's quotation to a Fortune reporter of Higginbotham's comment, "Woe be to any inspector that costs us a contract". Hartford inspector George Deaton, a colleague of Best's at Watts Bar, told the NRC investigators that Higginbotham had informed him in October of 1985 that if Deaton pursued his questioning (first raised by Haston in the spring of the previous year) of the "use as is" disposition of the welds covered by Report 5609, Higginbotham would receive a phone call from TVA managers. While noting Bressler's denial that he had applied pressure on ANIs to accept "rejectable work", the NRC Report also concluded that "[t]here is testimonial evidence to support that TVA, through [Hartford], attempted to discourage the site ANIs from talking to QTC and NSRS personnel". (*Id.* at 35)

After summarizing the evidence, the NRC Report stated as its "Agents' Conclusion" that Hartford personnel "failed, either inadvertently or by design" to deal with Haston's concern from a "technical or potential safety standpoint" and that this disposition may have been "influenced by discussions" between "TVA personnel" and Hartford and fear that other actions could "jeopardize" its TVA contract. (*Id.*)

The Record as to Fortune's Reporting

Extensive documentary evidence in the record revealed that in researching the statements about Bressler, the Fortune reporters interviewed a TVA investigator, a TVA engineer, two private investigators hired by TVA, a Congressional aide, and an authorized nuclear inspector (ANI), and reviewed sworn deposition testimony of TVA's Assistant General Counsel, a top TVA investigator, and a Congressional investigator. The investigative sources collectively confirmed that the ANI, Haston, had been forced, as a result of pressure from TVA's Bressler

through the ANI's employer, to sign a report certifying construction code compliance of certain welds in water and steam pipes at the Watts Bar nuclear power plant when the ANI believed (correctly) that no such compliance existed.

Documentary evidence also demonstrated that Fortune had learned in its interview and research process that four separate investigations—by the QTC, the House Committee on Commerce and Energy, the NSRS and the NRC—had turned up evidence of undue pressure by TVA, through Hartford management, on nuclear plant inspectors not to communicate their safety concerns to investigators. In the record at trial were the Fortune reporters' interview notes, and the sworn deposition testimony of a TVA investigator, a Congressional subcommittee investigator, and a TVA attorney also contained in Fortune's files, all of which provided consistent summaries of this evidence. The notes show that three of the reporters' sources named Bressler specifically as the source of pressure on Hartford; and two of the three named Bressler as the individual at TVA who pressured a Hartford inspector with respect to his refusal to approve the uninspected welds in April 1984. The Fortune article writer testified that a fourth source identified Bressler as the source of a specific threat, documented in his interview notes, that TVA would not renew Hartford's contract if Hartford did not "play ball".

In the course of the Fortune research in September 1986 into investigators' allegations that pressure had been exerted on nuclear inspectors not to voice their safety concerns, Owen Thero, a former QTC investigator, told the writer, Brian Dumaine, that Bressler had cautioned Hartford management, "If you don't play ball—Hartford could lose [its] contract" with the TVA. Dumaine subsequently interviewed Guity, a former investigator for TVA's Nuclear Safety Review Staff, and Jerry Smith, a former NSRS engineer, in Tennessee. Dumaine's notes indicate that Guity told Dumaine that "the TVA management and Hartford managers forced (other) Hartford managers to sign off on pipes despite objections of Hartford inspectors".

Brett Fromson, another Fortune reporter, interviewed Guity on three subsequent occasions in September 1986. Fromson's notes on Guity's statements about the Haston incident reflect that TVA had "pressured" Hartford "to accept the work"; that there had been "apparent collusion between the Hartford regional managers and TVA managers to persuade the ANI to approve penetration welds which were not hydrostatically tested"; and that Bressler was "the head man in the welds area at Watts Bar".

The reporters knew that Guity's statements to Fortune had been confirmed by the sworn testimony (which the reporters reviewed prior to publication) of the former chief of investigation of the NSRS and of a former assistant general counsel to TVA. The TVA's Assistant General Counsel, William Mason, had testified that there "was a serious question, whether there was an improper T.V.A. link that was defeating the purpose of the [Hartford inspection] contract and that independent nuclear inspector". His sworn testimony confirmed that Michael Kidd (then the NSRS chief of investigation) had advised Mason in early October, 1985 that Guity "had talked to some ANI's and had developed some information which he thought supported a conclusion that there was some collusion or improper pressure on communication between TVA and Hartford Steam Boiler". Specifically, Guity had learned that "Mark Bressler . . . who is in the Office of Engineering in the Code Section, was using his position on various national code committees to cause Hartford to take positions on T.V.A. code technical issues that they wouldn't otherwise take". Guity himself had informed Mason that

> Bressler would talk to somebody in the Hartford office in Atlanta about Code issues raised at the nuclear plant sites, . . . Hartford Atlanta would then call the T.V.A. plant site and explain away or order the resolution of the Code issues at the plant site despite the fact that the Code or the required engineering and substitution for the Code may not have been in fact done.

Kidd's testimony confirmed Mason's account.

Fromson also learned in September, 1986 that Guity's findings had been confirmed by the preliminary results of an investigation by the NRC. A science adviser to the House Subcommittee on Oversight and Investigations named Henry Myers, who had been briefed by the NRC on its investigation, told Fromson (as reflected in notes admitted at trial) that the NRC had

> found evidence supporting most of the NSRS allegations. That there was a violation of the ASME Code. That Bressler at TVA pressured Higginbotham . . . That Higg told Robison to pressure Haston. That Robison did so. Bressler is the guy who pressured Hartford in Atlanta.

Fromson subsequently interviewed a second former QTC investigator, William Kemp, who also identified Bressler as a source of TVA pressure on Hartford, specifically in the Haston incident. Kemp told Fromson, as the reporter's notes indicate, that

> Since Hasten [*sic*] refused to sign the April 1984 NCR [nonconformance report], Bressler at TVA called Higginbotham at Hartford in Atlanta, the regional manager. "Hey your guy is raising hell." Higg tells . . . Robison, to tell Haston to sign the NCR. So in May, Haston signs the NCR per request of Robison.

Kemp described this incident, according to the Fortune notes, as an example of the "implicit threat" presented by TVA to its outside inspection contractors that TVA would find another inspection company if its current inspectors did not "back off".

Fromson reached Haston himself by telephone at his home in Texas in late September 1986. Fromson's notes on the interview reveal that Haston told him that before he had signed, at the direction of his supervisor Robison, the nonconformance report, the Hartford Regional Manager, Higginbotham,

> was getting calls from Bressler, the guy in charge of ASME codes and standards . . . I don't think Bressler ever directly threatened Higginbotham to pull the con-

> tract, but the fear that it might be pulled was always there for Hartford. Higginbotham had a saying, "Woe to the inspector who costs us a contract."[7]

Although the Petition does not refer to it, Bressler himself acknowledged at trial that he had received at least one telephone message from a Fortune reporter in late September, 1986 seeking his comment in connection with the forthcoming article, and that he did not return the reporter's call. (Bressler Testimony, JA 756-58) It was undisputed that, as reported in the article, a spokesperson for TVA also declined comment and that Hartford was only willing to tell the reporters that it "has done nothing wrong".

Bressler and Fortune reporters Dumaine and Fromson testified at the trial in this action. Neither side called the various sources relied upon, apart from Haston, but the reporters' notes of the interviews they had conducted and the materials they had reviewed were introduced into evidence by the *plaintiff* and admitted, without objection or limitation as to their use, as joint trial exhibits.

SUMMARY OF ARGUMENT

A review of the record in this case demonstrates that the majority opinion below is not in conflict with that of any other

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7 At trial Haston acknowledged that he had told Fortune that his Hartford supervisors had consulted with TVA before they instructed Haston to approve TVA's proposed "use as is" disposition and thus certify that welds were in compliance with the Code when they were not. He denied knowledge of what pressure, if any, was brought to bear by TVA, noting that while he knew that Bressler spoke with Higginbotham of Hartford in April and May of 1984, Haston had not been present at those discussions. Thus the Petition's suggestion (at 9) that Haston had "direct knowledge of any conversations between Bressler and Haston's superiors at Hartford" is not supported by Haston's own testimony.

Circuit or the highest court of any state. Nor is it even argued to be. Nor did the Sixth Circuit's ruling depart from this Court's determinations in *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989), or *Masson v. New Yorker Magazine, Inc.*, ___ U.S. ___, 111 S. Ct. 2419 (1991).

Petitioner's contention that the majority opinion deviated from this Court's decision in *Masson* by focusing on the reputational impact, or "gist", of the challenged article can only be sustained by ignoring (as the Petition does) both the reasoning of *Masson* itself and a line of libel decisions extending back for generations which relies on the "gist" concept. Petitioner's argument also requires him to ignore, as well, the allegations in his own Amended Complaint (¶ 12), which are strikingly similar to the "gist" analyzed in the majority opinion and now attacked by the Petition.

Petitioner misstates the record and the holding below in asserting that the majority opinion departed from this Court's standard of review, as set forth in *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485 (1984), and *Harte-Hanks v. Connaughton, supra*, "[b]y failing to give due deference to the jury's credibility determinations". (Pet. 22) Petitioner offers but a single instance in which he alleges that a credibility judgment was ignored—and in that instance, as explained below, the Court explicitly adopted Petitioner's view of the disputed fact, thus giving effect to the very credibility assessment he claims was ignored.

The decision of the Court of Appeals was based on a thorough review of the entire record—a review commanded by this Court's decisions. Petitioner wholly fails to deal with what the majority opinion below determined were "consistent statements from multiple reliable sources" (Petition Appendix ("App.") at 14), all of which were documented in the reporters' extensive written notes and in sworn deposition testimony in their files and admitted into evidence at trial in this action without objection or limitation. Petitioner's selective omission of these sig-

nificant aspects of the record further emphasizes the unworthiness of this case for review by the Court.

REASONS FOR DENYING THE WRIT

THE SIXTH CIRCUIT'S APPLICATION OF ESTABLISHED CONSTITUTIONAL PRINCIPLES IN THIS DEFAMATION ACTION IN ACCORDANCE WITH PRECEDENTS OF THIS COURT RAISES NO ISSUE WORTHY OF THIS COURT'S CONSIDERATION

The Court below concluded that plaintiff Bressler had failed to demonstrate by the requisite clear and convincing evidence that Fortune published statements about plaintiff with "actual malice," that is, with actual subjective knowledge of the falsity of such statements or serious doubts as to their truth. (App. 2)[8] Before so concluding, and in accordance with precedents of this Court, it engaged in an examination of the "entire record" to assure that the First Amendment protections established by law were given their full intended effect. (App. 5) *See Harte-Hanks v. Connaughton, supra*, 491 U.S. at 688-89; *Bose v. Consumers Union, supra*, 466 U.S. at 505, 510-11; *see also Lothschuetz v. Carpenter*, 898 F.2d 1200, 1206 (6th Cir. 1990) (citing *Harte-Hanks* and *Bose*). The Court below held:

> Based on our review of the entire record—the several sources on which the *Fortune* reporters relied, the substance of those sources' statements, and the content of the

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8 Fortune had also urged on appeal that the judgment at trial in plaintiff's favor should be reversed because plaintiff had failed to carry his burden of proving the requisite falsity of the article and because the district court had failed to charge that such falsity had to be proved by clear and convincing evidence. The majority noted that while its "conclusion regarding actual malice in this case necessarily suggests that the gist of the article was substantially true, we do not reach this issue." (App. 6) The majority also did not reach the issue of the proper standard of proof of falsity. (*Id.*)

> various documents consulted in preparing the article—we believe the evidence could not have supported a finding of actual malice under the "clear and convincing" standard. (App. 6)

One judge dissented. No judge of the Court of Appeals voted to grant *en banc* review.

A. The Majority Opinion Below Properly Considered the "Gist" or "Sting" of the Article with Respect to Plaintiff Bressler

The majority opinion focused on the "gist" of the challenged portion of the article relating to Bressler in evaluating both truth (in the context of "actual malice") and actual malice itself. As described by the majority opinion,

> The "gist" of the contested portion of the *Fortune* article was that plaintiff Bressler allegedly played a lead role in pressuring an independent inspector to certify, contrary to fact, that certain safety-related welds in the Watts Bar plant met the engineering code requirements, and that Bressler also attempted to cover up that safety violation. (App. 6)

The Petition (and the dissenting opinion below, on which it relies heavily) challenge this approach, insisting that only the actual words used in the article may be employed in the analysis without regard to the impact of the statements taken as a whole.

Petitioner is compelled to acknowledge that this Court itself, in *Masson v. New Yorker Magazine, Inc.*, ___ U.S. ___, 111 S. Ct. 2419 (1991), reiterated the long-established principle "that as long as 'the substance, [the] gist, the sting' of a statement is substantially true, its author should not be liable for minor inaccuracies." (Pet. 20)[9] Indeed, this Court expressly

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9 Strikingly, the dissenting judge below dismissed this Court's use of the word "gist" as "unfortunate" and "almost certain to generate . . . confusion and difficulty in application". (App. 22) The dissent made no reference to the long history of the use of this term in libel jurisprudence.

held that reviewing courts were to look at the gist of the alleged statements and compare them to the truth in assessing both truth and actual malice. 111 S. Ct. at 2432-33. The reason for this analysis, as the Court explained, is that the law of libel "overlooks minor inaccuracies and concentrates upon substantial truth", because it exists to protect against injury to reputation, not to correct every inaccuracy as such. *Id.* This Court expressly concluded, "[o]ur definition of actual malice relies upon this historical understanding". *Id.* at 2433.

As the Court's use of the term "historical" denotes, reliance on the gist of a statement is not some recent innovation, but has been utilized in analyzing claims of libel for well over a century. *See, e.g., Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F.2d 1287, 1296 (D.C. Cir.) (Bork, J.), *cert. denied*, 488 U.S. 825 (1988); *Anderson v. Cramlet*, 789 F.2d 840, 843 (10th Cir. 1986); *Orr v. Argus-Press Co.*, 586 F.2d 1108, 1112 (6th Cir. 1978), *cert. denied*, 440 U.S. 960 (1979); B.Sanford, *Libel and Privacy* § 6.4, at 216-18 (2d ed. 1991); W. Keeton *et al.*, *Prosser & Keeton on Torts* § 116, at 842 (5th ed. 1984); *and see Edwards v. Bell*, 130 Eng. Rep. 162, 164, 165 (C.P. 1824).

Petitioner's challenge is not really a conceptual challenge to the use of a "gist" to summarize the meaning of extended passages. Rather, the real challenge is to the particular "gist" which the majority opinion below determined to be the reputational impact of the article. This is demonstrated by the Petitioner's own recourse to a summary of the article's statements about him. (Pet. 5) Petitioner asserts that, unlike his own summary, the majority opinion below rests "on an homogenized version of the statements at issue" (Pet. 19) which "substantially recharacterizes the charges levied against Petitioner by Respondent." (Pet. 17) This challenge to the majority's determination as to the particular substance of the article at issue in this case does not raise an issue of sufficient significance to other litigants to merit review by this Court. It is, in any event, wrong, as Petitioner's own pleadings, let alone even a cursory review of the article at issue, make plain.

The Amended Complaint on which the case was tried itself contends that the article misstated the asserted truth that Bressler's

> relationship with representatives of Hartford Steam Boiler was always proper and professional. He never exerted pressure upon Hartford to cover up safety violations.

(Amended Complaint, ¶ 12) (JA 25) This statement in plaintiff's pleading (nowhere referred to in either the Petition or the dissenting opinion below) focused on denials of "pressure" and a "cover-up" of "safety violations". It precisely paralleled the "gist" relied on by the majority. (*See* App. 6)[10] This is the meaning which Petitioner understood the article put at issue and which he challenged at trial.

The majority opinion thus engaged in no "rewriting" (App. 19) but rather, in accordance with this Court's opinion in *Masson* and scores of opinions of other courts, focused on the substance of the charge *as pled by Petitioner* to determine whether it was " 'proved true, irrespective of slight inaccuracy in the details.' " *Masson v. New Yorker Magazine Inc., supra*, 111 S. Ct. at 2433.

In any event, the gist relied on by the Court below reflects a sound basis for analyzing the evidence of actual malice. A comparison of it with the Petition's own summary (Pet. 5) and the article itself suggests that each would have a similar impact on the reader. The Petition's efforts to suggest that while (apparently concededly) such actual malice did not exist as to

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10 It also paralleled the trial judge's summary in his jury charge that

> The plaintiff claims that in this article, he was accused of illegal, unethical and unprofessional conduct including exertion of pressure on Hartford Steam Boiler personnel to cover up breaches of safety standards.

The Pretrial Order (at par. II(d)) in this action, dated August 5, 1988, which was discussed and approved for entry by counsel for Petitioner and Respondent, also contained almost identical language.

the "gist" it did exist as to specific allegations in the article is based on misstatements and distortions of the record.

Thus the Petition asserts, for example, that Fortune acted with malice in reporting a "cover-up" and "suppress[ion]" of safety documents because the "purpose" of the nonconformance report "was to disclose, not to hide, a deviation discovered by a utility company during construction of its plant." (Pet. 16) And it asserts that Fortune knew that "the purpose of all such reports was to disclose rather than to suppress evidence of deviations from code". (*Id.*) This is, simply put, legal sophistry, as the Petition itself reveals. Because the ANI finally agreed (at the "written and verbal direction" of his superior) to sign the nonconformance report providing for a "use as is" disposition of the welds in question, the NCR was indeed filed. But, as the Petition acknowledges in a footnote, where the ANI agrees with TVA, "no further action is necessary, other than maintaining the NCR as a document". (Pet. 6, n.3) As the Petition also recognizes, however, had the inspector and TVA *not* agreed, the NCR would have been "dispatched to the Nuclear Regulatory Commission" for a decision as to the appropriate disposition. (*Id.*) This public discussion of the "use as is" disposition—a disposition which Hartford itself later came to recognize was a "poor judgment call"—and the attendant fuel-loading delay Bressler and others said they feared (NRC Report at 35) was just what the pressure on ANI Haston was designed to avoid. To laud this treatment of the NCR as a "disclosure" says much about the Petition.[11]

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11 Perhaps even more striking is the Petition's insistence that a greater defamatory impact was conveyed by the article's statement that certain welds were "untested" (Pet. 5, 6-7) as opposed to the asserted reality, as described in the Petition, that "the Code deviation disclosed in NCR 5609 involved only the omission to visually inspect the welds during the hydrostatic testing procedure." (Pet. 7) (emphasis added) In other words, Petitioner contends that the "hydrostatic" test—running water at pressure through the pipes in question—was conducted although he con-

B. The Majority Opinion Below Reviewed the Entire Record in Accordance with This Court's Precedents and Properly Concluded, Based on Substantial Documentary Evidence, that Plaintiff Had Failed To Demonstrate Fortune's Actual Knowledge of Falsity or Serious Doubts as to the Truth of the Article

The Petition (and the dissenting opinion below) also cast their disagreement with the majority opinion in terms of an asserted difference as to the application of the standard of appellate review required by cases ranging from *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), through *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485 (1984), to *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989), *aff'g* 842 F.2d 825 (6th Cir. 1988). The Petition argues that the majority opinion below deviated from the appropriate review standard "[b]y failing to give due deference to the jury's credibility determinations". (Pet. 22) This contention is simply inaccurate. First, the majority opinion never even suggests that it is declining to accept the jury's credibility assessments. This is not surprising, for its analysis is premised on uncontradicted documentary evidence. And in the only instance pointed to by the Petitioner in which controverted oral testimony is at issue, the Court (contrary to the Petitioner's assertion) explicitly relied upon the version supporting *Petitioner's* position.

The single example offered by the Petition involves the failure of the Fortune reporters to interview Harry Jackson, an expert on engineering codes who was described as a "straight shooter" and "Mr. Codes and Standards". The Petition correctly notes that reporter Fromson testified that he had tried to reach Jackson and been unsuccessful. (Pet. 24) It also notes that the jury could have disbelieved the reporter. (*Id.*) What it does *not*

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cedes that no one at all observed its results (*i.e.*, whether or not any water had actually leaked out of the pipes through the welds). Conducting a "test" without determining its results is, of course, a meaningless exercise.

note is that the Court of Appeals explicitly accepts Petitioner's version of this occurrence (*i.e.*, that Fortune made a "decision not to gain additional comment from Harry Jackson") and, assuming this to be the case, held that the decision did not amount to the purposeful avoidance of the truth of the sort present in *Harte-Hanks*. (App. 15) This holding was plainly correct.[12] But even more importantly, this example reflects the inaccuracy of Petitioner's central contention; contrary to Petitioner's claim, the Court below did *not* reject or ignore the jury's credibility determination. There is no issue presented on this point.

In an effort to create a standard of review issue, the Petition completely discounts the numerous and consistent investigative sources on whom the reporters relied as having no "first-hand" knowledge and no "direct knowledge". (Pet. 9; *see also* App. 55) But there is no requirement that journalists rely on only legally admissible, non-hearsay evidence. As this Court recognized in *New York Times v. Sullivan*, *supra*, one of the reasons behind the adoption of the actual malice rule was to avoid the chilling of speech inherent in requiring a reporter to "adduc[e] legal proofs" of the charge. 376 U.S. at 279; *and see Clyburn v. News World Communications, Inc.*, 903 F.2d 29, 34 (D.C. Cir. 1990) ("Reporters cannot be expected to insist on statements that would be admissible under the Federal Rules of Evidence . . . ."). It is hard to imagine that many reports about cover-ups or conspiracies could ever be written if only "direct" testimony by participants in the scheme could support a defense against a charge of actual malice. The Petition cites no authority for eliminating such sources from a court's consideration.

Finally, the Petition seeks to rely heavily on this Court's opinion in *Harte-Hanks Communications, Inc. v. Connaughton*,

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12 Jackson was not identified by anyone as having any specific knowledge about the handling of the NCR at issue here or the other facts as reported by Fortune.

supra. (Pet. 24-25) In *Harte-Hanks*, however, the article at issue was based on a single source (Thompson) although six witnesses had "consistently and categorically" denied her account. 491 U.S. at 683. Yet the newspaper purposefully avoided interviewing the single witness (Stephens) and reviewing the one audiotape which could have provided dispositive evidence of falsity. In contrast, documentary evidence in the record here demonstrates that the Fortune reporters based their article on a large number of official sources, each of whom consistently supported the account ultimately published.[13] While in *Harte-Hanks* the newspaper staff consciously avoided interviewing the single witness who could have confirmed Thompson's story, here it was Petitioner who avoided Fortune, admitting at trial that he refused to return a telephone request from Fortune for comment. The contrast with *Harte-Hanks* could not be clearer.

None of the source materials on which the majority opinion based its determination raises an issue of credibility. The majority opinion below, in accordance with the precedents of this Court, properly concluded that the reporters had substantial materials before them which plainly rebutted any suggestion, let alone any finding by clear and convincing evidence, that their article was published with knowledge of falsity or serious doubts as to the truth of charges which, only a month later, were formally reflected in the official findings of a final report of the Nuclear Regulatory Commission.

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13 The Petition points to only one source relied on by the reporters (Haston) whose account arguably differed from theirs not as to the facts, which were agreed upon by all sources, but as to the relative significance of the problem at issue. (Pet. 9) This does not begin to provide adequate support for a finding of actual malice.

CONCLUSION

The Petition for a writ of certiorari should be denied.

February 16, 1993

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APPENDIX

Supreme Court Rule 29.1 Statement

Pursuant to Supreme Court Rule 29.1, the Court is advised that Time Warner Inc. has no parent company and that its affiliated companies, including non-wholly owned subsidiaries and their non-wholly owned subsidiaries, are listed here:

A.P. Schmidt Company
Aberbach (Wien) Gesellschaft m.b.H.
Abigail Music London Ltd.
Abril Livros Ltda.
Acapulco 37, S.A. de C.V.
Atram Films Inc.
Akoursberga Vision AB
Alpha Theatres, Inc.
American Cablevision of Kansas City, Inc.
American Cablevision of Monroeville, Inc.
American Communications Corporation
American Digital Communications, Inc.
American Family Publishers (a partnership)
American Heritage Cablevision, Inc.
American Lawyer Media L.P.
American Motion Picture Export Company, Inc.
American Television and Communications Corporation
American Television of California, Inc.
Amicus Television Pty, Ltd.
Anfel-Kabelkorn Kabel-kommunikacios Kft
Anthracite-Lorimer: Dallas the Early Years
Anxious Records Ltd.
Anyway Music S.r.I.
ARP 113, Inc.
ARP Partnership
Arrow Music Corp.
Ascherberg Hopwood & Crew Ltd.
Asiaweek Limited
Atari Corporation
Atari Far East Limited
Atari Games Corporation
Atari International (Hong Kong) Ltd.
Atari-Wong Company
ATC Cablevision of San Marino, Inc.
ATC Cablevision of South Pasadena, Inc.
ATC Holdings, Inc.
ATC Holdings II, Inc.
ATC Satellite, Inc.
ATC-PPV, Inc.
Australian Multiplex Joint Venture

Babel Music N.V.
Bennie Benjamin Music, Inc.
Bernie Brilstein Productions, Inc.
Black Entertainment Television Inc.
Boston Ventures Limited Partnership II

Boston Ventures Limited Partnership III
Bountiful Co. Limited
Bozell Inc.
Brae Company
Brookfield CATV
Bubbles Music Ltd.
Burlington Music Company Ltd.

Cafe Americana Inc.
Canciones Del Mundo S.A.
Capital Cablevision Systems, Inc.
Capriccio Musikverlag GmbH
Carolina Network Corporation
CAT Partnership
Central Pennsylvania Cable AdNet (GP)
Century Venture Corporation
Century Colorado Corp.
Chameleon Music Group
Chappell Music Company, Inc.
Chappell Music Ltd.
Chappell Nordiska AB
Chappell Theatrical Rights Ltd.
Chappell & Co. GmbH
Chappell & Co. (Australia) Pty. Ltd.
Chappell & Intersong Music Group (Australia) Ltd.
Chappell & Intersong Music Group (Germany) Ltd.
Chappell-Morris Ltd.
Chappell-Styne Inc.
Chatham Music Corporation
Cinamerica Theatres L.P.
Cinema Data Service S.r.L.
Classics FM Limited
COGEDEP
Collection Inc.
Collins Licensing L.P.
Colorado Invesco, Inc.
Colorado Springs Cablevision, Inc.
Colorado Springs Citizens Cable, Inc.
Columbia House Company
Columbia-Cannon-Warner Bros. Distributors Ltd.
Columbia TriStar & Warner Filmes de Portugal, Lda.
Comedy Partners
Compagnia Generale del Disco S.p.A.
Cosmos Soccer Club, Inc.
Courtroom Television Network
Crimson Satellite Associates
Curci de Espana S.L.
CV of Viera

Dagmar Teatret I/S
Dash Inc.
DC Comics
DC Comics Inc.
Def America Records
Delfont Music Ltd.
DF/ATC Communications Management Venture (GP)
Dolmatch Publications, Inc.
Dorella Music Inc.
Dubey-Karr Corp.

East West Records GmbH
Ediciones Musicales Sagitario S.A.
Ediciones Musicales Sympathy S.A.

Edition Autarc GmbH
Editions Chappell SARL
Editions et Productions Theatrales Chappell S.A.
Editoria de Musica WEA, S.A. de C.V.
Editorial Musical America Toda SL
Editorial Musical Korn Intersong SAIC
Edizioni Chappell S.r.I.
Eldorado Musikverlag GmbH
Erato Disques S.A.
Erie Telecommunications, Inc.
Exeter Distributing Inc.
Express Music Ltd.
E.C. Creations, Inc.
E.C. Publications, Inc.
E/A Music, Inc.
E! Entertainment Television, Inc.

Fanch/ATC Communications Management Venture (GP)
FCI/ATC Communications Management Joint Venture
Finvision AB
Foreign Press Distributors Ltd.
Fortissimo Gruppo Editoriale S.r.I.
Fortune Italia, S.p.a.
Foster Frees Music, Inc.
Franklin Mint Company

Geffen Film Company
GHK Partners, L.P.
Giant Merchandising
Giant Records
Girl Group Company
Gliro Music, Inc.
Gloria Musikverlag Kommanditgesellschaft
Gulf Coast Cable Television
GWWR Acquisition Company L.P.

Hajdu-Kabelkom Kabelkommunikacios Kft
Halnstad Kabelvision AB
Hankook Ilbo Time-Life Ltd.
Hank Snow Music Inc.
Hanks Music Inc.
Hanseatic Musikverlag GmbH
Happy Musikverlag GmbH
Happy Musikverlag GmbH & Co. KG
Harmonie Verlagsgesellschaft fur Literatur und Kunst GmbH
Harry Gray, Mel Klein & Partners, L.P.
HBO Asia, C.V.
HBO Enterprises UK Ltd.
HBO Film Management, Inc.
HBO Ole
HBO Ole Distribution 1 A.V.V.
HBO Ole International Sales Company Ltd.
HBO Ole Services S.A.
HBO Ole Producciones S.A.
HBO Satellite Services, Inc.
HBO Turkey Holdings I Inc.
HBO Turkey Holdings II Inc.
Hermann Schneider Musikalien und Buehnenverlags Kommanditgesellschaft
Hippocrates Partners
HKP Partners of New Zealand
Hobby Films Limited
Home Box Office, Inc.

Home Box Office, Inc.
Home Box Office (Singapore) Pts. Ltd.
Houston Cable TV, Inc.

Initial Group
Interice Corporation
International Music Publications Ltd.
Interscope Records
Interscope/TVT Joint Ventures (Nine Inch Nails)
Intersong Hellas Ltd.
Intersong Music Ltd.
Intersong Musikverlag GmbH
Intersong Primavera S.A.
Intersong Pty. Ltd.
Intersong U.S.A., Inc.
Intersong-Basart Publishing Group B.V.
Intersong-Forlagen AB
Inverness/ATC Joint Venture
IPH-TLA Kumial

Jader Music Corporation
Japan Records Distribution System, Inc.
Japanese Visitor Network
Jewel Music Publishing Company Ltd.
Jonathan Music (Australia) Pty. Ltd.
Jubilee Music Inc.

Kabeldatakom Szamitastechnikai Kft
Kabelkom Management Co.
Kabekom Holding Co.
Kabelkom Kabeltelevizio Kft
Kabelvision KB
Kabelkom-Dunaujvaros Kabel-kommunikacios Kft
Kabelkom-Kelenfold Kabel-televizio Kft
Kabelkom-Nagykanizsa Kabel-televizio Kft
Kabelkom-Nyiregyhaza Kabel-kommunikacios Kft
Kabelkom-Szehesfehvar Kabel-kommunikacios Kft
Kabelkom-Veszprem Kabel-kommunikacios Kft
Kansas City Cable Partners
Kay Holdings Limited
Kirshner Warner Bros. Music Ltd.
Kremlin Productions, Inc.

Laurel Cablevision, Inc.
LEM America, Inc.
Litton Musikverlag GmbH
Little Reata Music Inc.
Living In America Inc.
Lombardo Music, Inc.
Lorimer Canada, Inc.
Lorimer Distribution International (Canada) Corp.
Lorimer Film Partners
Lorimer International Italia S.R.L.
Lorimer Motion Picture Management, Inc.
Lorimer Music A Corp.
Lorimer Music Bee Corp.
Lorimer Music Publishing, Inc.
Lorimer-Hauck "Valerie" Joint Venture
Lorimer-Telepictures International Limited

Lorimer-Telepictures Magazines, Inc.
Lorimer-Telepictures Pty. Limited
Love & War Associates
Low Country Cablevision L.P.
Lower Bucks Cablevision, Inc.
Lu-Jac Music Inc.
L.D.C.A. of Maryland, Inc.

Magnet Music Ltd.
Marmalade Music Ltd.
Maverick Recording Company, L.P.
Medical Sciences International Ltd.
Medai Editora Medica e Cientifica
Memphis CATV, Inc.
Metro Cable Marketing Co-op, Inc.
Metrocolor Laboratories (U.K.) Limited
Metrocolor London Limited
Microband Pacific Corporation
Mile Hi Cablevision, Inc.
Mile Hi Cablevision Associates, Ltd.
Milwaukee Entertainment Television, Inc.
Motion Picture Export Association of America, Inc.
Movieworld Enterprises Partnership
Movieworld Holdings Partnership
MSC, Music Service Center Tontragervertriebs GmbH
Musicom S.A.
Musik unserer Zeit Verlag GmbH
Musikverlag Intersong GmbH
Muziekuitgeverij Artemis B.V.

n-tv Nachrichtenfernschen GmbH & Co. KG
Nabland Ltd.
National Cable Advertising, L.P.
Neue Velt Musikverlag GmbH
New Chappell Inc.
New Kary S.r.L.
New World Music Company (Ltd.)
Night Owl Club, Inc.
NPP Music Corp.
Notservice AB
Nova-Net Communications, Inc.
Nucable Resources Corporation
Nuova Carisch S.p.A.

Offsetdruckerei Rotapress Warner Chappell Musikverlag Gesellschaft mbH & Co. KG
Olive Avenue Distributing Inc.

Paisley Park Records
Palace Music Company Ltd.
Palm Springs Communications Corporation
Pamela Music Inc.
Paragon Communications
Patricia Music Ltd.
Pay-Per-View Network, Inc.
Pendulum Records
Pepamar Music Corp.
Peoples Cable Corporation
Pesci Kabeltelevizio Kft
Philadelphia Community Antenna Television Company
Played Like a Stepsun Music, Inc.
Polaris Partners I, L.P.

Potential Music, Inc.
PPVN Holding Company
President Incorporated
PriCellular
PRIMESTAR Partners L.P.
Productions et Editions Cinematographiques Francaises SARL
Productions et Editions Musicales Baboo SARL
Public Cable Company
Publishers Express Inc.
Publishers (Georgia) Express Inc.
Putnam Music Inc.

Queens Inner Unity Cable System
Quincy Jones Entertainment Company L.P.
Quinn Martin Warner FBI Stories
Quinn Martin Warner Productions
QVC Network, Inc.

Rainbowcheer Ltd.
Rainmaker Productions Limited
RCF/ATC Communications Management Joint Venture
RCF Michigan/ATC Communications Management Joint Venture
Reata Publishing Inc.
Record Service Benelux V.O.F.
Rhino Entertainment Company
Rick's Music Inc.
Rightsong Music Inc.
Riverside Avenue Distributing Inc.
Rodart Music Corporation
Rogli Music Inc.
Rondo-Verlag GmbH
rooArt Pty. Limited
Rosemeadow Publishing Corp.
Running Mates, Inc.
R.S.O. Publishing B.V.

Sahara Music Inc.
Sari Lodge Pty. Limited
Savoy Pictures Entertainment Inc.
Scala Biograferne I/S
SCD Finans AB
SCD Holdings AB
SCD Kabel TV AB
Sea Chime Music, Inc.
Sea World Aviation Partnership
Sea World Enterprises Partnership
Sea World Management Pty. Limited
Sea World Nara Equipment Company Pty. Limited
Sea World Nara Resort Hotel Pty. Limited
Sea World Property Trust
Select Records
Sevin Rosen Bayless & Borovoy
Sevin Rosen Fund IV
SF Holdings Inc.
SHE AB
Shows, Inc.
Shubert Music Publishing Corporation
Sifta Milwaukee Cable Corp.
Simba Productions, Inc.
Sire Records Ltd.
Six Flags Entertainment Corporation
Six Flags Theme Parks Inc.
SKY Network Television Limited
SMSG, Inc.
Soccer Camps of America, Inc.
Specchio Inc.

SRB Partners Fund L.P.
SR/MDM Venture Inc.
St. Louis Interconnect Company
Steinbruch Musikverlag GmbH
Stepsun Music Entertainment Co., L.P.
Summy-Birchard, Inc.
Sunshine Network, Inc.
Sunshine Network of Florida, Ltd. (LP)
Swedish Dish and Cable AB
SCD Invest AB

TA Milwaukee Cable Co., Inc.
TCW Americas Development Association L.P.
Teldec Classics International GmbH
Teldec Press Tontrager GmbH & Co. KG
Teldec Press Tontrager Verwaltungs GmbH
Telestar-Kabelkom Kabel-kommunikacios Kft
The Atrium Development Co.
The Ladd Corporation
The Miss Saigon Company L.P.
The Music Sound Exchange Company
The Sunshine Network Joint Venture
The Track Marketing Company
The Travel Channel, Inc.
Throat Music Ltd.
Time Australia Magazine Pty. Ltd.
Time Distribution Services
Time Warner Cable Inc.
Time Warner Cable New Zealand Ltd.
Time Warner City Cable Advertising
Time Warner Entertainment Australia Pty. Ltd.
Time Warner Entertainment Company, L.P.
Time Warner Entertainment GmbH
Time Warner Entertainment Japan Inc.
Time Warner Entertainment UK Limited
Time Warner Entertainment Limited
Time Warner Inc.
Time Warner Merchandising Canada Inc.
Time Warner Pay-Per-View Distribution Inc.
Time Warner Stage Productions Ltd.
Time-Hachette Japan, Inc.
Time-T.I. Communications Co. Ltd.
Tonika Musikverlag Horst Bussow KG
Torremodo Limited
Tri-Chappell Music Inc.
Tri-County Cable Television Company
Turner Broadcasting Systems, Inc.
Turner/HBO Ltd. Purpose Joint Venture
TV 1000 Sverige AB
TWE Finance Limited
Twins Ediciones Musicales, S.A.

Unichappell Music Inc.

Vernon Music Corporation
Victory Film Productions, Limited
Viewer's Edge Partnership

W Cinemas Inc.
W Cinemas Holding Inc.
W.B.M. Music Corp.
WAC Productions, Inc.
Wallaby Music Pty. Ltd.
Warner Air Inc.
Warner Bros. Belgium S.A./N.V.
Warner Bros. Beteiligungs Gesellschaft mbH
Warner Bros. Canada Inc.
Warner Bros. Consumer Products (UK) Ltd.
Warner Bros. Deutschland PAY TV GmbH
Warner Bros. Distributing (Canada) Limited
Warner Bros. Distributors Ltd.
Warner Bros. Film GmbH
Warner Bros. Film GmbH Kino-bertriebe
Warner Bros. Film Ve Video Sanayi Ve Ticaret A.S.
Warner Bros. Holdings Sweden AB
Warner Bros. Inc.
Warner Bros. Investments (Pilsworth) Limited
Warner Bros. Italia S.p.A.
Warner Bros. Licensing Espanola S.A.
Warner Bros. Music Australia Pty. Ltd.
Warner Bros. Music GmbH Germany
Warner Bros. Music Holland BV
Warner Bros. Music International Inc.
Warner Bros. Music (Italy) S.r.l.
Warner Bros. Pictures, Inc.
Warner Bros. Productions Limited
Warner Bros. Properties Australia Pty. Limited
Warner Bros. Publications Inc.
Warner Bros. Singapore Pts. Ltd.
Warner Bros. Theatres Advertising Agency Limited
Warner Bros. Theatres Equipment Supply Limited
Warner Bros. Theatres Ltd.
Warner Bros. Theatres (Australia) Pty Limited
Warner Bros. Theatres (Holland) B.V.
Warner Bros. Theatres (UK) Ltd.
Warner Bros. Twelve Star Distributing Co. (GP)
Warner Bros. Video Pty. Limited
Warner Bros. /S 1984-1985 Television Co. (GP)
Warner Bros. (Africa) Pty. Ltd.
Warner Bros. (Australia) Pty. Ltd.
Warner Bros. (D) A/S
Warner Bros. (Finland) OY (OLD)
Warner Bros. (Finland) OY (NEW)
Warner Bros. (F.E.) Inc.
Warner Bros. (Holland) B.V.
Warner Bros. (Japan) Inc.
Warner Bros. (Korea) Inc.
Warner Bros. (Mexico) S.A.
Warner Bros. (Norway) A/S
Warner Bros. (N.Z.) Limited
Warner Bros. (South) Inc.
Warner Bros. (Sweden) AB
Warner Bros. (Transatlantic) Inc.

Warner Cable Communications Company
Warner Cable Communications Company of Greater Cincinnati
Warner Cable Communications Inc.
Warner Cable Communications of Cincinnati, Inc.
Warner Cable Communications Operating Corp.
Warner Cable Communications Operating, Ltd.
Warner Cable of Brookfield, Inc.
Warner Cable of New Jersey, Inc.
Warner Cable of New York, Inc.
Warner Cable of Vermont, Inc.
Warner Cable Operating Inc.
Warner Cable SSD Inc.
Warner Chappell Music France S.A.
Warner Chappell Music GmbH Germany
Warner Chappell Music Group (Netherlands) B.V.
Warner Chappell Music Holland B.V.
Warner Chappell Music Italiana S.p.A.
Warner Chappell Musikverlag Gesellschaft mbH
Warner Custom Music Corp.
Warner Dagmar A/S
Warner Entertainment Italia S.r.L.
Warner Films Consolidated Inc.
Warner Holdings Australia Pty. Limited
Warner Home Video Espanola S.A.
Warner Home Video France S.A.
Warner Home Video GmbH
Warner Home Video Limited
Warner Home Video Portugal Lda.
Warner Home Video Pty. Limited
Warner Home Video spol s.r.o.
Warner Home Video (Canada) Ltd.
Warner Home Video (Ireland) Ltd.
Warner Home Video (Nederland) B.V.
Warner Home Video (Sweden) AB
Warner Home Video (U.K.) Ltd.
Warner Leisure, Inc.
Warner Morgan Creek Multiplex Cinemas
Warner Music Argentina SRL
Warner Music Brasil Ltda.
Warner Music Chile S.A.
Warner Music Exports Ltd.
Warner Music Finland OY
Warner Music Germany GmbH
Warner Music Japan Inc.
Warner Music Manufacturing Europe GmbH
Warner Music (Northern Ireland) Limited
Warner Mycal Corporation
Warner Scala A/S
Warner Sea World Aviation Pty. Limited
Warner Sea World Investments Pty. Limited
Warner Sea World Operations Pty. Limited
Warner Sea World Units Pty. Limited
Warner World Australia Pty. Limited
Warner & Metronome Films ApS

Warner-Elektra-Atlantic Development Corp.
Warner-Lusomundo Sociedade Iberica de Cinemas Ltda.
Warner-Tamerlane Publishing Corp.
Warner/Chappell Edicoes Musicalis Ltda.
Warner/Chappell Music Belgium N.V.
Warner/Chappell Music Canada Limited
Warner/Chappell Music Denmark A/S
Warner/Chappell Music Japan KK
Warner/Chappell Music Mexico S.A. de C.V.
Warner/Chappell Music Norway A/S
Warner/Chappell Music Scandinavia AB
Warner/Chappell Music (Services), Inc.
Warner/Chappell Music Note-service A/S
Warner/Elektra/Asylum Music Inc.
Warner/Noreale Music Inc.
Warner/Refuge Music Inc.
WB Gold Music Corp.
WB Music Corp.
WBM/House of Gold Music, Inc.
Wenatchee Mountain, Inc.
Wheatley Music Pty. Ltd.
Wheatley Music Publishing Pty. Ltd.
Whittle Communications, L.P.
Whittle Schools L.P.
White River Cablevision L.P.
Wide Music, Inc.
WLE Acquisition Company L.P.
Working Woman Inc.
WSW Partners, L.P.
WWT Partnership

ZTT Records Limited